



General Assembly

**Substitute Bill No. 6637**

January Session, 2011

\* \_\_\_\_HB06637JUD\_\_041511\_\_\_\_ \*

**AN ACT CONCERNING DETERMINATIONS OF COMPETENCY IN  
JUVENILE AND YOUTH IN CRISIS MATTERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (1) of section 46b-120 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2011*):

4 (1) "Child" means any person under eighteen years of age who has  
5 not been legally emancipated, except that (A) for purposes of  
6 delinquency matters and proceedings, "child" means any person who  
7 is (i) at least seven years of age at the time of the alleged commission of  
8 a delinquent act and who is (I) under seventeen years of age [who] and  
9 has not been legally emancipated, or [(ii)] (II) seventeen years of age or  
10 older [who,] and committed a delinquent act prior to attaining  
11 seventeen years of age, [has committed a delinquent act or,] or (ii)  
12 subsequent to attaining seventeen years of age, (I) violates any order of  
13 the Superior Court or any condition of probation ordered by the  
14 Superior Court with respect to a delinquency proceeding, or (II)  
15 wilfully fails to appear in response to a summons under section 46b-  
16 133 or at any other court hearing in a delinquency proceeding of which  
17 the child had notice, and (B) for purposes of family with service needs  
18 matters and proceedings, child means a person who is at least seven  
19 years of age and is under seventeen years of age;

20 Sec. 2. Subdivision (7) of section 46b-120 of the general statutes is  
21 repealed and the following is substituted in lieu thereof (*Effective*  
22 *October 1, 2011*):

23 (7) "Family with service needs" means a family that includes a child  
24 who is at least seven years of age and is under seventeen years of age  
25 who (A) has without just cause run away from the parental home or  
26 other properly authorized and lawful place of abode, (B) is beyond the  
27 control of the child's or youth's parent, parents, guardian or other  
28 custodian, (C) has engaged in indecent or immoral conduct, (D) is a  
29 truant or habitual truant or who, while in school, has been  
30 continuously and overtly defiant of school rules and regulations, or (E)  
31 is thirteen years of age or older and has engaged in sexual intercourse  
32 with another person and such other person is thirteen years of age or  
33 older and not more than two years older or younger than such child or  
34 youth;

35 Sec. 3. Subdivision (1) of section 46b-120 of the general statutes, as  
36 amended by section 82 of public act 09-7 of the September special  
37 session, is repealed and the following is substituted in lieu thereof  
38 (*Effective July 1, 2012*):

39 (1) "Child" means any person under sixteen years of age who has  
40 not been legally emancipated, except that (A) for purposes of  
41 delinquency matters and proceedings, "child" means any person who  
42 is (i) at least seven years of age at the time of the alleged commission of  
43 a delinquent act and who is (I) under eighteen years of age [who] and  
44 has not been legally emancipated, or [(ii)] (II) eighteen years of age or  
45 older [who,] and committed a delinquent act prior to attaining  
46 eighteen years of age, [has committed a delinquent act and,] or (ii)  
47 subsequent to attaining eighteen years of age, (I) violates any order of  
48 the Superior Court or any condition of probation ordered by the  
49 Superior Court with respect to such delinquency proceeding, or (II)  
50 wilfully fails to appear in response to a summons under section 46b-  
51 133 [with respect to such delinquency proceeding] or at any other  
52 court hearing in a delinquency proceeding of which the child had

53 notice, and (B) for purposes of family with service needs matters and  
54 proceedings, child means a person who is at least seven years of age  
55 and is under eighteen years of age;

56 Sec. 4. Subdivision (7) of section 46b-120 of the general statutes, as  
57 amended by section 82 of public act 09-7 of the September special  
58 session, is repealed and the following is substituted in lieu thereof  
59 (*Effective July 1, 2012*):

60 (7) "Family with service needs" means a family that includes a child  
61 who is at least seven years of age or a youth who (A) has without just  
62 cause run away from the parental home or other properly authorized  
63 and lawful place of abode, (B) is beyond the control of the child's or  
64 youth's parent, parents, guardian or other custodian, (C) has engaged  
65 in indecent or immoral conduct, (D) is a truant or habitual truant or  
66 who, while in school, has been continuously and overtly defiant of  
67 school rules and regulations, or (E) is thirteen years of age or older and  
68 has engaged in sexual intercourse with another person and such other  
69 person is thirteen years of age or older and not more than two years  
70 older or younger than such child or youth;

71 Sec. 5. (NEW) (*Effective October 1, 2011*) In any juvenile matter, as  
72 defined in section 46b-121 of the general statutes, or youth in crisis  
73 matter pursuant to section 46b-150f of the general statutes, in which a  
74 child or youth is alleged to have committed a delinquent act or an act  
75 or omission for which a petition may be filed under section 46b-149 or  
76 46b-150f of the general statutes, the child or youth shall not be tried,  
77 convicted, adjudicated or subject to any disposition pursuant to section  
78 46b-140, 46b-149 or 46b-150f of the general statutes while the child or  
79 youth is not competent. For the purposes of this section, a transfer to  
80 the regular criminal docket of the Superior Court pursuant to section  
81 46b-127 of the general statutes shall not be considered a disposition. A  
82 child or youth is not competent if the child or youth is unable to  
83 understand the proceedings against him or her or to assist in his or her  
84 own defense.

85 (b) If, at any time during a proceeding on a juvenile or youth in  
86 crisis matter, it appears that the child or youth is not competent,  
87 counsel for the child or youth, the prosecutorial official, or the court,  
88 on its own motion, may request an examination to determine the  
89 child's or youth's competency. Whenever a request for a competency  
90 examination is under consideration by the court, the child or youth  
91 shall be represented by counsel in accordance with the provisions of  
92 sections 46b-135 and 46b-136 of the general statutes.

93 (c) A child or youth alleged to have committed an offense is  
94 presumed to be competent. The age of the child or youth is not a per se  
95 determinant of incompetency. The burden of going forward with the  
96 evidence and proving that the child or youth is not competent by a  
97 preponderance of the evidence shall be on the party raising the issue of  
98 competency, except that if the court raises the issue of competency, the  
99 burden of going forward with the evidence shall be on the state. The  
100 court may call its own witnesses and conduct its own inquiry.

101 (d) If the court finds that the request for a competency examination  
102 is justified and that there is probable cause to believe that the child or  
103 youth has committed the alleged offense, the court shall order a  
104 competency examination of the child or youth. Competency  
105 examinations shall be conducted by (1) a clinical team constituted  
106 under policies and procedures established by the Chief Court  
107 Administrator, or (2) if agreed to by all parties, a physician specializing  
108 in psychiatry who has experience in conducting forensic interviews  
109 and in child and adult psychiatry. Any clinical team constituted under  
110 this section shall consist of three persons: A clinical psychologist with  
111 experience in child and adolescent psychology, and two of the  
112 following three types of professionals: (A) A clinical social worker  
113 licensed pursuant to chapter 383b of the general statutes, (B) a child  
114 and adolescent psychiatric nurse clinical specialist holding a master's  
115 degree in nursing, or (C) a physician specializing in psychiatry. At  
116 least one member of the clinical team shall have experience in  
117 conducting forensic interviews and at least one member of the clinical  
118 team shall have experience in child and adolescent psychology. The

119 court may authorize a physician, a clinical psychologist, a child and  
120 adolescent psychiatric nurse specialist or a clinical social worker  
121 licensed pursuant to chapter 383b of the general statutes, selected by  
122 the child or youth, to observe the examination, at the expense of the  
123 child or youth or, if the child or youth is represented by counsel  
124 appointed through the Public Defender Services Commission, the  
125 Office of the Chief Public Defender. In addition, counsel for the child  
126 or youth, his or her designated representative and, if the child or youth  
127 is represented by a public defender, a social worker from the Division  
128 of Public Defender Services, may observe the examination.

129 (e) The examination shall be completed not later than fifteen  
130 business days after the date it was ordered, unless the time for  
131 completion is extended by the court for good cause shown. The  
132 members of the clinical team or the examining physician shall prepare  
133 and sign, without notarization, a written report and file such report  
134 with the court not later than twenty-one business days after the date of  
135 the order. The report shall address the child's or youth's ability to  
136 understand the proceedings against such child or youth and such  
137 child's or youth's ability to assist in his or her own defense. If the  
138 opinion of the clinical team or the examining physician set forth in  
139 such report is that the child cannot appreciate the proceedings against  
140 such child or youth or is not able to assist in his or her own defense,  
141 the members of the team or the examining physician must determine  
142 and address in their report: (1) Whether there is a substantial  
143 probability that the child or youth will attain or regain competency  
144 within ninety days of an intervention being ordered by the court; and  
145 (2) the nature and type of intervention, in the least restrictive setting  
146 possible, recommended to attain or regain competency. On receipt of  
147 the written report, the clerk of the court shall cause copies of such  
148 written report to be delivered to counsel for the state and counsel for  
149 the child or youth at least forty-eight hours prior to the hearing held  
150 under subsection (f) of this section.

151 (f) The court shall hold a hearing as to the competency of the child  
152 or youth not later than ten business days after the court receives the

153 written report of the clinical team or the examining physician pursuant  
154 to subsection (e) of this section. A child or youth may waive such  
155 evidentiary hearing only if the clinical team or examining physician  
156 has determined without qualification that the child or youth is  
157 competent. Any evidence regarding the child's or youth's competence,  
158 including, but not limited to, the written report, may be introduced in  
159 evidence at the hearing by either the child or youth or the state. If the  
160 written report is introduced as evidence, at least one member of the  
161 clinical team or the examining physician shall be present to testify as to  
162 the determinations in the report, unless the clinical team's or the  
163 examining physician's presence is waived by the child or youth and  
164 the state. Any member of the clinical team shall be considered  
165 competent to testify as to the clinical team's determinations.

166 (g) (1) If the court, after the competency hearing, finds by a  
167 preponderance of the evidence that the child or youth is competent,  
168 the court shall continue with the prosecution of the juvenile or youth  
169 in crisis matter.

170 (2) If the court, after the competency hearing, finds that the child or  
171 youth is not competent, the court shall determine: (A) If there is a  
172 substantial probability that the child or youth will attain or regain  
173 competency within ninety days of an intervention being ordered by  
174 the court; and (B) whether the recommended intervention to attain or  
175 regain competency is appropriate. In making its determination on an  
176 appropriate intervention, the court may consider: (i) The nature and  
177 circumstances of the alleged offense; (ii) the length of time the clinical  
178 team or examining physician estimates it will take for the child or  
179 youth to attain or regain competence; (iii) whether the child or youth  
180 poses a substantial risk to reoffend; and (iv) whether the child or youth  
181 is able to receive community-based services or treatment that would  
182 prevent the child or youth from further offending.

183 (h) If the court finds that there is not a substantial probability that  
184 the child or youth will attain or regain competency within ninety days  
185 or that the recommended intervention to attain or regain competency

186 is not appropriate, the court may issue an order in accordance with  
187 subsection (k) of this section.

188 (i) (1) If the court finds that there is a substantial probability that the  
189 child or youth will attain or regain competency within ninety days or  
190 less if provided an appropriate intervention, the court shall schedule a  
191 hearing on the implementation of such intervention within five  
192 business days.

193 (2) The provision of an intervention for the purpose of rendering a  
194 child or youth competent shall comply with the following conditions:  
195 (A) The period of intervention shall not exceed ninety days, unless  
196 extended for an additional ninety days in accordance with the criteria  
197 set forth in subsection (j) of this section; and (B) the intervention shall  
198 be provided by the Department of Children and Families or, if the  
199 child's or youth's parent or guardian agrees to pay for such services, by  
200 any appropriate person, agency, mental health facility or treatment  
201 program that agrees to provide an appropriate intervention in the least  
202 restrictive setting available to the child or youth and comply with the  
203 requirements of this section.

204 (3) Prior to the hearing, the court shall notify the Commissioner of  
205 Children and Families, the commissioner's designee or the appropriate  
206 person, agency, mental health facility or treatment program that has  
207 agreed to provide an appropriate intervention to the child or youth  
208 that an intervention to attain or regain competency will be ordered.  
209 The commissioner, the commissioner's designee or the appropriate  
210 person, agency, facility or program shall be provided with a copy of  
211 the report of the clinical team or examining physician and shall report  
212 to the court on a proposed implementation of the intervention prior to  
213 the hearing.

214 (4) At the hearing, the court shall review the written report and  
215 order an appropriate intervention for no longer than ninety days in the  
216 least restrictive setting available to restore competency. In making its  
217 determination, the court shall use the criteria set forth in subdivision

218 (2) of subsection (g) of this section. Upon ordering an intervention, the  
219 court shall set a date for a hearing, to be held at least ten business days  
220 after the completion of the intervention period, for the purpose of  
221 reconsidering the child's or youth's competency.

222 (j) (1) At least ten business days prior to the date of any scheduled  
223 hearing on the issue of the reconsideration of the child's or youth's  
224 competency, the Commissioner of Children and Families, the  
225 commissioner's designee or other person, agency, mental health facility  
226 or treatment program in charge of an intervention to render a child or  
227 youth competent shall report on the progress of such intervention to  
228 the clinical team or examining physician.

229 (2) Upon receipt of the report on the progress of such intervention,  
230 the child or youth shall be reassessed by the original clinical team or  
231 examining physician, except that if the original team or examining  
232 physician is unavailable, the court may appoint a new clinical team  
233 that, where possible, shall include at least one member of the original  
234 team, or a new examining physician. The new clinical team or  
235 examining physician shall have the same qualifications as the original  
236 team or examining physician, as provided in subsection (d) of this  
237 section, and shall have access to clinical information available from the  
238 provider of the intervention. Not less than two business days prior to  
239 the date of any scheduled hearing on the reconsideration of the child's  
240 or youth's competency, the clinical team or examining physician shall  
241 submit a report to the court that includes: (A) The clinical findings of  
242 the provider of the intervention and the facts upon which the findings  
243 are made; (B) the clinical team's or the examining physician's opinion  
244 on whether the child or youth has attained or regained competency or  
245 is making progress toward attaining or regaining competency within  
246 the period covered by the intervention order; and (C) any other  
247 information concerning the child or youth requested by the court,  
248 including, but not limited to, the method of intervention or the type,  
249 dosage and effect of any medication the child or youth is receiving.

250 (3) Within two business days of the filing of a reassessment report,



251 the court shall hold a hearing to determine if the child or youth has  
252 attained or regained competency within the intervention period  
253 ordered. If the court finds that the child or youth has attained or  
254 regained competency, the court shall continue with the prosecution of  
255 the juvenile or youth in crisis matter. If the court finds that the child or  
256 youth has not attained or regained competency within the intervention  
257 period ordered, the court shall determine whether further efforts to  
258 attain or regain competency are appropriate. The court shall make its  
259 determination of whether further efforts to attain or regain  
260 competency are appropriate in accordance with the criteria set forth in  
261 subdivision (2) of subsection (g) of this section. If the court finds that  
262 further intervention to attain or regain competency is appropriate, the  
263 court shall order a new period for restoration of competency not to  
264 exceed ninety days. If the court finds that further intervention to attain  
265 or regain competency is not appropriate or the child or youth has not  
266 attained or regained competency after an additional intervention of  
267 ninety days, the court shall issue an order in accordance with  
268 subsection (k) of this section.

269 (k) (1) If the court determines after intervention that the child or  
270 youth has not attained or regained competency and that there is not a  
271 substantial probability that the child or youth will attain or regain  
272 competency, or that further intervention to attain or regain  
273 competency is not appropriate based on the criteria set forth in  
274 subdivision (2) of subsection (g) of this section, the court shall: (A)  
275 Dismiss the petition if it is a delinquency, family with service needs or  
276 youth in crisis petition; (B) vest temporary custody of the child or  
277 youth in the Commissioner of Children and Families and notify the  
278 Chief Child Protection Attorney, who shall assign an attorney to serve  
279 as guardian ad litem for the child or youth and investigate whether a  
280 petition should be filed under section 46b-129 of the general statutes;  
281 or (C) order that the Department of Children and Families or some  
282 other person, agency, facility or program, or such child's or youth's  
283 probation officer, conduct or obtain an appropriate assessment and,  
284 where appropriate, propose a plan for services that can appropriately

285 address the child's or youth's needs in the least restrictive setting  
286 available and appropriate. Any plan for services may include a plan  
287 for interagency collaboration for the provision of appropriate services  
288 after the child or youth attains the age of eighteen.

289 (2) Not later than ten business days after the issuance of an order  
290 pursuant to subparagraph (B) or (C) of subdivision (1) of this  
291 subsection, the court shall hold a hearing to review the order of  
292 temporary custody or any recommendations of the Department of  
293 Children and Families, such probation officer or such attorney or  
294 guardian ad litem for the child or youth.

295 (3) If the child or youth is adjudicated neglected, dependent or  
296 uncared for subsequent to such a petition being filed, or if a plan of  
297 services pursuant to subparagraph (C) of subdivision (1) of this  
298 subsection has been approved by the court and implemented, the court  
299 may dismiss the delinquency, family with service needs or youth in  
300 crisis petition, or, in the discretion of the court, order that the  
301 prosecution of the case be suspended for a period of up to eighteen  
302 months. During the period of suspension, the court may order the  
303 Department of Children and Families to provide periodic reports to  
304 the court to ensure that appropriate services are being provided to the  
305 child or youth. If during the period of suspension, the child or youth or  
306 the parent or guardian of the child or youth does not comply with the  
307 requirements set forth in the service plan, the court may hold a hearing  
308 to determine whether the court should follow the procedure for  
309 instituting a neglect, dependent or uncared for petition pursuant to  
310 subparagraph (B) of subdivision (1) of this subsection. Whenever the  
311 court finds that the need for the suspension of prosecution is no longer  
312 necessary, but not later than the expiration of such period of  
313 suspension, the delinquency, family with service needs or youth in  
314 crisis petition shall be dismissed.

<p>This act shall take effect as follows and shall amend the following sections:</p>
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Section 1	<i>October 1, 2011</i>	46b-120(1)
Sec. 2	<i>October 1, 2011</i>	46b-120(7)
Sec. 3	<i>July 1, 2012</i>	46b-120(1)
Sec. 4	<i>July 1, 2012</i>	46b-120(7)
Sec. 5	<i>October 1, 2011</i>	New section

***Statement of Legislative Commissioners:***

Sections 2 and 4 were inserted for statutory consistency with the definition of "family with service needs".

***JUD***      *Joint Favorable Subst.*